NO. 80-1705

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In the Supreme Court of the United States

OCTOBER TERM, 1981

McBROOM RIG BUILDING SERVICES, INC.,
Petitioner

versus

DIAMOND M DRILLING COMPANY,

PETROLEUM ENGINEERS, INC.,

GARY AYO,

GEROLINE B. VERONIE,

INLAND BARGE SERVICE,

LEE C. MOORE COMPANY,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

The sole question presented to the Supreme Court for review in this case is whether or not the Court of Appeals erred in disregarding a stipulation made between counsel and before the district judge to the effect that cross-claims were filed between all defendants for indemnity and contribution. The Court of Appeal declined to rule on the question of indemnity and its sole reason was not presented to the district court. This is not factually correct and your petitioner has no remedy other than the court's review of this matter.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

GARY AYO

Plaintiff

VERSUS

DIAMOND M DRILLING COMPANY
AND SOUTHPORT EXPLORATION, INC.

Defendants-Third Party
Plaintiff-Respondents

VERSUS

LEE C. MOORE CO., ET AL

Third Party Defendants

McBROOM RIG BUILDING SERVICES, INC.

Third Party Defendant-
Petitioner

* *

GEROLINE B. VERONIE, ET AL

Plaintiffs-Respondents

VERSUS

DIAMOND M DRILLING COMPANY, ET AL

Defendants

McBROOM RIG BUILDING SERVICES, INC.

Defendant-Respondent

VERSUS

MISSION INSURANCE COMPANY AND
INLAND BARGE RENTALS, INC.

Intervenors-Respondent

PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the District Court for the Western District of Louisiana, Lafayette Division is not reported. The opinion of the Court of Appeals for the Fifth Circuit is unreported. Both opinions are attached.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on November 3, 1980. A petition for rehearing was denied on December 4, 1980. Copies thereof are appended to this petition. The jurisdiction of this Court is invoked under 20 USC 1254 (1).

STATEMENT

On January 9, 1977, the Diamond M Drilling Company's submersible drilling barge number 29 was located in the coastal waters of Louisiana in the Atchafalaya Bay. Diamond M Drilling Company was drilling for Southport Exploration. On the day of the casualty, Rig 29 was in the process of putting "casing" in the hole. During this operation, the derrick on the submersible drilling barge collapsed. As a result of this casualty, Mrs. Veronie's husband was killed, and Mr. Gary Ayo and Mr. Edison L. Mier were injured. Mrs. Veronie and her children instituted suit against Diamond M Drilling Company. Gary Ayo instituted suit against Diamond M Drilling Company and Southport Petroleum. Edison L. Mier instituted suit against Diamond M Drilling Company, Southport Petroleum, Lee C. Moore Com-

pany (the manufacturer of the derrick), McBroom Rig Building Services, Inc. and others. Diamond M Drilling Company in the Veronie and Ayo cases, by way of third party demand, filed suit against Petroleum Engineers, Lee C. Moore Company, McBroom Rig Building Services and others. During the course of the litigation, Mrs. Veronie and Gary Ayo amended their petition to add Lee C. Moore Company, Petroleum Engineers and McBroom Rig Building Services, Inc. as direct defendants. Inland Barge Rentals, Inc. and its insurer intervened for property damage in the Veronie suit. All three cases were consolidated for trial. Diamond M Drilling Company settled with the plaintiff, Gary Ayo, in exchange for an assignment of rights which he might have against McBroom Rig Building Services, Inc. and other defendants. The claims of Edison L. Mier were settled by all defendants. The cases were tried beginning July 16, 1979. Plaintiff's claims against all of the defendants except Diamond M Drilling Company were denied by the District Court. In *Geroline B. Veronie, et al v. Diamond M Drilling Company, et al,* the District Court entered judgment in favor of Mrs. Veronie and her minor children for $700,000.00 and in favor of Mission Insurance Company and Inland Barge Rentals, Inc. in the sum of $20,322.83 against Diamond M Drilling Company (53%), Petroleum Engineers (35%), and McBroom Rig Building Services, Inc. (12%). In *Gary Ayo v. Diamond M Drilling Company, et al,* the Court entered judgment in favor of Diamond M Drilling Company, to whom Gary Ayo has assigned

his rights against the remaining defendants, against Petroleum Engineers in the sum of $102,387.34 (representing 35% of the agreed judgment value), and McBroom Rig Building Services in the full sum of $35,104.23 (representing 12% of the agreed judgment value). From these two judgments, McBroom appealed. The Court of Appeals affirmed the decision of the District Court.

The appeal to the Court of Appeals was based on various grounds. Among the issues presented to the Court of Appeals was the claim by McBroom Rig Building Services, Inc. that it was entitled to indemnity from Diamond M Drilling Company and Petroleum Engineers. The basis for this indemnity was the traditional tort theory based on the active-passive negligence. The District Court did not rule McBroom's cross claim. The Court of Appeals addressed itself to the issue of indemnity by simply stating that the matter had not been brought up in the District Court. It is this decision of the Court of Appeals which is the basis of this Petition for Certiorari.

EXISTENCE OF JURISDICTION BELOW

The District Court for the Western District of Louisiana, Lafayette Division, had jurisdiction over this case under the provisions of 33 USC § 905 (B).

ARGUMENT

The decision below should be reviewed because it is clearly erroneous and ignores the record of the case.

The Court of Appeals in its reasons for judgment states that:

> "The record reflects that the question of whether the negligence of appellant, McBroom Rig Building Services, Inc. was passive or active was never presented to the Court below, and we need not consider it on appeal. *Capps v. Humble Oil and Refining Company*, 536 Fed. 2d 80 (5th Cir. 1976); *Wolfe v. Frank*, 477 Fed. 2d 467 (5th Cir. 1973)."

This reason for judgment is clearly incorrect. Because of the complexity of the pleadings, it was stipulated among all counsel at a pretrial conference held before the District Judge that cross claims would be deemed to have been filed against all other parties in the litigation for indemnity and contribution. The basis for these cross claims would be either in contract and/or under the clasic theory of tort indemnity. The District Court failed to rule on these cross claims.

In the proceedings of the District Court, McBroom Rig Building Services, Inc. made certain claims for indemnity against Diamond M Drilling Company and Petroleum Engineers. These claims were not decided upon by the District Court explicitly, but implicitly in its reasons for judgment, these claims were denied. The Court of Appeals has dismissed the appeal of McBroom Rig Building Services, Inc. by simply disregarding the record. The petitioner, McBroom Rig Building Services, Inc., is without a remedy and requests that this Court exercise its discretionary jurisdiction in this case, and remand this case for further proceeding, ordering the Court of Appeal to address itself to the issue of indemnity.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari be granted.

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CERTIFICATE

This is to certify that a copy of the foregoing has been served on all counsel by placing same in the United States mail, postage prepaid and properly addressed.

Houma, Louisiana, this 19th day of January, 1981.

Philip E. Henderson

Carlos E. Lazarus, Jr.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

GARY AYO
Plaintiff

VERSUS

DIAMOND M DRILLING COMPANY
AND SOUTHPORT EXPLORATION, INC.
Defendants-Third Party
Plaintiff-Respondents

VERSUS

LEE C. MOORE CO., ET AL
Third Party Defendants

McBROOM RIG BUILDING SERVICES, INC.
Third Party Defendant-
Petitioner

* *

GEROLINE B. VERONIE, ET AL
Plaintiffs-Respondents

VERSUS

DIAMOND M DRILLING COMPANY, ET AL
Defendants

McBROOM RIG BUILDING SERVICES, INC.
Defendant-Respondent

VERSUS

MISSION INSURANCE COMPANY AND
INLAND BARGE RENTALS, INC.
Intervenors-Respondent

APPENDIX

A-2

No. 79-4030
Summary Calendar
D.C. Docket No. CA-77-0217

GARY AYO
Plaintiff
VERSUS
DIAMOND M DRILLING COMPANY
AND SOUTHPORT EXPLORATION, INC.
Defendants-Third Party
Plaintiffs-Appellees
VERSUS
LEE C. MOORE CO., ET AL
Third Party Defendants
McBROOM RIG BUILDING SERVICES, INC.
Third Party Defendant-
Appellant

Appeal from the United States District Court for the
Western District of Louisiana

Before AINSWORTH, GARZA and SAM D. JOHNSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that third party defendant-appellant pay to the appellees the costs on appeal, to be taxed by the Clerk of this Court.

November 3, 1980

ISSUED AS MANDATE:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 79-4030 and
79-4048 (consolidated)

GARY AYO,

Plaintiff,

versus

DIAMOND M. DRILLING CO., and
SOUTHPORT EXPLORATION, INC.,

Defendants Third Party
Plaintiffs-Appellees,

versus

LEE C. MOORE, CO., ET AL.,

Third Party Defendants,

McBROOM RIG BUILDING
SERVICES, INC.,

Third Party Defendant-
Appellant.

* *

GERLINE B. VERONI, ET AL.,

Plaintiffs-Appellee,

versus

DIAMOND M. DRILLING CO., ET.AL.,

Defendants-Appellees,

McBROOM RIG BUILDING SERVICES,
INC.,

Defendant-Appellant,

versus

MISSION INSURANCE COMPANY and
INLAND BARGE RENTALS, INC.,

Intervenors-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING
(December 4, 1980)

Before AINSWORTH, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

_____

United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNIT A

NO. 79-4030

GARY AYO, summary calendar
Plaintiff,

versus

DIAMOND M. DRILLING CO., and
SOUTHPORT EXPLORATION, INC.,
Defendants-Third Party
Plaintiffs-Appellees,

versus

LEE C. MOORE, CO., ET AL.,
Third Party Defendants,

McBROOM RIG BUILDING
SERVICES, INC.,
Third Party Defendant-
Appellant.

No. 79-4048

GEROLINE B. VERONIE, ET AL.,
Plaintiffs-Appellee,

versus

DIAMOND M. DRILLING CO., ET.AL.,
Defendants-Appellees,

McBROOM RIG BUILDING SERVICES,
INC., Defendant-Appellant,

versus

MISSION INSURANCE COMPANY and
INLAND BARGE RENTALS, INC.,
Intervenors-Appellees.

Appeals from the United States District Court for the
Western District of Louisiana

(November 3, 1980)

Before AINSWORTH, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM:

These cases arise out of the collapse of a derrick on a submersible drilling barge, the DIAMOND M NO. 29. Because of such collapse, Ray Veronie was killed and Gary Ayo was seriously injured. The Court below concluded that the plaintiffs' claim against the vessel owner, Diamond M Drilling Company, arose under a statute of the United States, namely, 33 U.S.C. § 905b, and that plaintiffs were entitled to a jury as against them. The plaintiffs' claims against the remaining defendants were in maritime tort, and since diversity was lacking, they clearly had no right to a jury against the remaining defendants. The Court deemed it desirable that a single fact finder consider the allegations of concurrent negligence against the multiple defendants. Consequently, he ordered that the jury would serve as an advisory jury as to the remaining defendants.

While there were many defendants at the beginning of the trial, the Court directed a verdict in favor of many of them, and left only Diamond M Drilling Company, Petroleum Engineers, Inc. and McBroom Rig Building Services, Inc., as defendants.

The jury found that the concurrent fault of Diamond M Drilling Company, Petroleum Engineers, Inc. and McBroom Rig Building Services, Inc. caused the accident and the resulting injuries and damages. The jury prorated the fault among the tortfeasors as follows:

Diamond M	53%
Petroleum Engineers	35%
McBroom	12%

The Court below held that the evidence amply supported the

jury's verdict, and he adopted the jury's findings as his own.

Prior to trial, a settlement had been reached with plaintiff, Gary Ayo, in the sum of $292,535.26, as between him and Diamond M Drilling Company and Southport Exploration, Inc. and their insurers. All agreed as to the reasonableness of this amount and further agreed to submit the issue of liability to the jury. The jury awarded to the widow and children of Ray Veronie the sum of $700,000.00. The Court below found these damages to be supported by the evidence.

The only appellant before us is McBroom Rig Building Services, Inc. Their allegations that the Court below erred in finding that the lack of structural supports on the derrick of DIAMOND M NO. 29 was the proximate cause of the casualty in question, and that McBroom Rig Building Services, Inc. failed to warn DIAMOND M of a condition which DIAMOND M knew existed are without merit, as is their allegation that the Court allowed the awarding of excessive damages for the loss of society claim of Mrs. Veronie and her children.

Their only allegation on appeal left is the failure of the Court below to grant them indemnity as against the other two defendants on their claim that their negligence was passive, whereas the negligence of Diamond M Drilling Company and Petroleum Engineers, Inc. was active. They allege that this Circuit has not passed on the question of whether or not the tort theory of indemnity, as between active and passive tortfeasors, has been abrogated by the Supreme Court's decision in *United States v. Reliable Transfer Co.*, 421 U.S. 397, 95 S.Ct.

1708, 44 L.Ed.2d 251 (1975). The record reflects that the question of whether the negligence of appellant McBroom Rig Building Services, Inc. was passive or active was never presented to the Court below, and we need not consider it on appeal. *Capps v. Humble Oil and Refining Company*, 536 F.2d 80 (5 Cir. 1976); *Wolf v. Frank*, 477 F.2d 467 (5 Cir. 1973).

The findings of fact of the Court below are not clearly erroneous, nor are the conclusions of law, and, therefore, the judgment of the Court below in these two cases must be

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

GARY AYO

VS. CIVIL ACTION NO. 77-0217

DIAMOND M DRILLING
COMPANY ET AL

GERLINE B. VERONIE,
IND., ETC. ET AL

VS. CIVIL ACTION NO. 77-0218

DIAMOND M DRILLING
COMPANY ET AL

EDISON L. MIER

VS. CIVIL ACTION NO. 78-0023

DIAMOND M DRILLING
COMPANY ET AL

MEMORANDUM OPINION

These cases arise out of the collapse of a derrick on a submersible drilling barge, the DIAMOND M NO. 29. Mr. Ray Veronie was killed and Messrs. Ayo and Mier received serious injuries.

Messrs. Veronie, Ayo and Mier were all employed by Frank's Casing Crew and were aboard the DIAMOND M 29 to run casing.

These cases were tried during the week of July 16. When the trial began, the following defendants were before the court: 1) Diamond M Drilling Company, a drilling contractor which owned and operated the DIAMOND M 29; 2) Southport Production, the owner of the lease where this well was being

drilled; 3) Petroleum Engineers, Inc., a firm which provided drilling engineers or consultants to represent the interest of Southport, the lease operator. Southport engaged Petroleum Engineers to provide a "company" representative to Rig 29 to oversee the operations at least to the extent necessary to protect Southport's interests. 4) McBroom Rig Building Service, Inc., a firm engaged in assembling and dismantling drilling derricks. The services of such a specialty company were required for the type derrick involved in this accident when it was necessary to move the the rig. When the Diamond M 29 changed locations, a "rig building" crew unbolted and dismantled the drilling derrick so that the drilling barge could be towed under power lines, bridges and other similar obstructions. When the drilling barge reached location, the services of the rig builder would again be used to reconstruct the derrick. 5) Lee C. Moore Company, the alleged manufacturer of the derrick. 6) J. Ray McDermott & Company, Inc., dredged the slip where Rig 29 was located at the time of the accident. 7) C. F. Bean & Company, a dredging concern, placed shell in the slip and made a level bed for Rig 29 to rest on. 8) Bankers Insurance Company, insurer of C. F. Bean; 9) Northwest Insurance Company was the compensation insurer of Frank's Casing Crew and intervened for benefits paid the three claimants under the LSHW Compensation Act. 10) Mission Insurance Company and Inland Barge Drilling Company intervened in 77-0218 to recover for damage to a cargo barge which resulted when the

derrick fell.

At the close of the plaintiffs' evidence, I directed a verdict in favor of Southport Production, J. Ray McDermott, C. F. Bean and its insurer, Bankers Insurance Company.

PARTIAL SETTLEMENTS CONFECTED DURING THE TRIAL

During the trial of the case, various plaintiffs partially settled with various defendants as outlined below:

1) Ayo entered into a compromise agreement with Diamond M under the terms of which Ayo received $250,000 and an agreement by Diamond M to reimburse the compensation intervenor. Ayo in turn agreed to fully release Diamond M and grant to Diamond M an assignment of whatever claim Ayo had against the remaining defendants.

2) Mier compromised with Diamond M for $200,000, with Lee C. Moore for $30,000 and with Petroleum Engineers for $60,000. Mier agreed to reimburse the compensation intervenor. Mier reserved his rights against the remaining defendant, McBroom Rig Building Service.

3) Mrs. Veronie compromised with Lee C. Moore Company for $60,000 and reserved her rights against all other defendants.

THE TRIAL

The court denied early motions filed in this case to strike the jury. I concluded that plaintiffs' claim against the vessel owner, Diamond M, arose under a statute of the United States, namely, 33 U.S.C. § 905b, and that plaintiffs were entitled to

a jury as against Diamond M Drilling Company. Plaintiffs' claims against the remaining defendants were in maritime tort. Since pure diversity was lacking, plaintiffs clearly had no right to a jury as against the remaining defendants. It seemed desirable to the court, however, that a single fact finder consider the allegations of concurrent negligence against the multiple defendants. Consequently, I ordered that the jury, to which plaintiffs were entitled of right against Diamond M, would serve as an advisory jury as to the remaining defendants.

Because of Mr. Mier's failure to keep a scheduled appointment with physicians who defendants planned to call at the trial, the quantum feature of the Mier case was severed from the balance of the case. In Ayo, no quantum determination was necessary; the parties agreed that the settlement sum paid by Diamond M to Ayo was reasonable.

The Mier and Veronie cases were submitted to the jury on liability; only the Veronie case was submitted to the jury on quantum. It was agreed that Diamond M's right to recover a portion of the settlement sum it paid to Ayo would be governed by the liability findings made by the jury with respect to the Mier and Veronie claims.

The jury found that the concurrent fault of Diamond M, Petroleum Engineers and McBroom caused the accident and resulting injuries and damages. The jury prorated the fault among the tortfeasors as follows:

Diamond M	53%
Petroleum Engineers	35%
McBroom	12%

DISCUSSION

To the extent the jury was advisory, the evidence amply supports the jury verdict and I adopt the jury's findings as my own.

Since the record clearly illuminates the questions presented, no detailed findings by the court are necessary. See *Mallory v. Citizens Utilities Company*, 342 F.2d 796 (2d Cir. 1965).

The evidence amply demonstrated the negligence of the parties cast by the jury in this case. I agree with the jury's assessment of liability against three defendants and the exoneration of one defendant.

DIAMOND M DRILLING COMPANY

The Diamond M crew improperly caused the individual joints of casing to collide with the drill pipe stacked in the derrick. This occurred as individual joints of casing were lifted out of the V-door and into the derrick. This contact between casing and drill pipe was caused by a combination of

a) pulling the casing into the derrick at an excessive rate of speed; and

b) failing to center the elevators and travelling block over the hole.

I conclude from the evidence that the derrick, as designed by the manufacturer, was equipped with either external "wing" braces or internal "plumb-up" braces. For some inexplicable reason, this derrick was not equipped with either type bracing. This resulted in a serious defect in the structural stability of the

derrick.

Considering the instability of the derrick, Diamond M was grossly negligent: a) in attempting a casing operation under the windy conditions prevailing at the time of the accident; b) with a heavy load of drill pipe stacked in the derrick.

It was clear from the evidence that Diamond M was more culpable than either of the other two defendants which were cast. The equipment which failed belonged to Diamond M; Diamond M had the primary responsibility for maintaining its equipment; Diamond M had the greater opportunity to discover and correct the defects.

PETROLEUM ENGINEERS

Petroleum Engineers contracted to furnish skilled, experienced drilling consultants to protect the interests of its client, Southport Production. Mr. Alvin Belaire, a highly experienced petroleum engineer, and Mr. Joseph Trahan whose expertise had been acquired through a more practical background as toolpusher, alternated as the company representative on this drilling barge. Both Belaire and Trahan observed the condition of the derrick, the manner in which the operations were being conducted at the time of the accident, the weather conditions and the load or stress to which the derrick was subjected. Mr. Belaire observed the contact between the casing and the drill pipe as the Diamond M driller pulled the casing into the derrick. Diamond M had the primary responsibility to maintain its equipment and conduct drilling and related operations in a careful manner. It is apparent from the

record that the Petroleum Engineers' representative had the authority and the obligation to make reasonable efforts to correct any unsafe practices which he, because of his experience and expertise, perceived. Mr. Belaire was aware of: a) the collision between the drill pipe and individual joints of casing; b) high winds; c) stress caused by drill pipe being stacked in the derrick.

Messrs. Belaire and Trahan were negligent in failing to recognize the dangers presented by this combination of circumstances and in failing to take corrective action.

The finding by the jury that Diamond M was 53% at fault and that Petroleum Engineers was 35% at fault takes into account the higher degree of culpability attributable to the actions of Diamond M.

McBROOM RIG BUILDING SERVICE

McBroom Rig Building Service had on more than one occasion torn down and rebuilt this derrick. McBroom rebuilt the derrick for the last time approximately one year prior to the accident. Members of the McBroom rig building crew testified that the derrick had neither wing nor plumb-up bracing when they dismantled and erected the derrick. Considering McBroom's expertise in the structural composition of oilfield derricks, McBroom was at fault in failing to advise Diamond M that the bracing was missing. In assessing the degree of McBroom's fault, the jury was entitled to consider and apparently did consider the fact that the McBroom crewmembers were never asked by Diamond M to give an opinion on the

condition of the derrick. The McBroom crew was understandably reluctant to criticize the customer's equipment or and do anything other than assemble the parts of the derrick that were made available to them.

The proration of fault among the defendants as made by the jury is reasonable and fully supported by the evidence and I accept those findings and adopt them as my own.

LEE C. MOORE

The jury found that the derrick had no manufacturing defect and exonerated Lee C. Moore. I agree with this finding for the following reasons:

1) The derrick was more than 20 years old at the time of the collapse.

2) Under the state of the art at the time of the manufacture of the derrick, there was no showing that the steel utilized in the construction of the derrick was inadequate or that it rendered the derrick defective.

DAMAGES

PECUNIARY LOSS

The jury awarded Mrs. Veronie and her three minor children $275,000 for pecuniary loss. This, of course, includes loss of support, loss of services and loss of nurture and guidance to the children.

Mr. Veronie's earnings the year prior to the accident were slightly over $18,000. If one considers that Mr. Veronie spent $3,000 on personal expenses, the loss of income to Mrs. Veronie and her children would amount to approximately

$15,000 per year. If this loss is computed over Mr. Veronie's life expectancy of 30 years and discounted at a six percent discount rate, the total income loss amounts to $206,475.

A reasonable award for loss of nurture and guidance would be $1,500 per year to each child during his minority. This would result in the following award for loss of nurture and guidance:

Gene	8 years	$12,000
Scott	10 years	$15,000
Wendy	18 years	$27,000
TOTAL		$54,000

The remainder of the award, $14,525, is not an unreasonable sum to award Mrs. Veronie for the loss of her husband's services. This would amount to slightly under $500 per year for 30 years (the work life expectancy) or approximately $375 per year for 39 years (the life expectancy).

I conclude therefore that the jury award for pecuniary loss is reasonable and proper and I adopt that award as my own.

LOSS OF SOCIETY

I reaffirm my position taken during the trial that plaintiffs are entitled to recover damages for loss of society. *Higginbotham* [1] and *Ivy* [2] are inapposite. Plaintiffs in those cases sought recovery for wrongful death under the Death on the

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[1] *Mobil Oil v. Higginbotham*, 436 U.S. 618 (1978).

[2] *Ivy v. Security Barge Lines, Inc.*, 585 F.2d 732 (1978).

High Seas Act and the Jones Act, respectively. The death acts which were the basis for Higginbotham's and Ivy's claims limit recovery to claims for pecuniary loss.

Mr. Veronie was not a member of the crew of a vessel and therefore has no claim under the Jones Act. The death occurred aboard a vessel in inland waters of Louisiana; the Death on the High Seas Act has no application. Mrs. Veronie's claim is brought under the authority of the general maritime law as expanded by *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970). Mrs. Veronie is entitles to assert a claim for loss of society under the general maritime law. *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974).

The jury awarded the following sums for loss of society:

Mrs. Veronie	$125,000
Gene Veronie	$100,000
Scott Veronie	$100,000
Wendy Veronie	$100,000

The final question presented is whether the amount awarded for loss of society is reasonable.

No precise formula is available to guide the factfinder in making an award for loss of society. This loss includes the following elements of damage: Loss of love, affection, care, attention, companionship, comfort and protection and generally for loss of the broad range of mutual benefits which each family member receives from the others' existence. See *Gaudet, supra.*

Defendants urge that the Supreme Court in *Higginbotham* has effectively limited the amount which may be awarded for loss of society to a sum which is "symbolic."

The following language contained in the Court's opinion in *Higginbotham* is relied upon by defendants:

> It is true that the measure of damages in coastal waters will differ from that on the high seas but even if this difference proves significant [20] a desire for uniformity cannot override the statute."

> The Court stated in footnote 20 as follows: It remains to be seen whether the difference between awarding loss-of-society damages under Gaudet and denying them under DOHSA has a great practical significance. It may be argued that the competing views on awards for loss of society . . . can best be reconciled by allowing an award that is primarily symbolic rather than a substantial portion of the survivors' recovery."

Traditionally no issue has been subject to greater jury discretion than the assessment of such intangible items of damage as loss of love, affection and society.

The footnote reference of the court in *Higginbotham* is, in my judgment, insufficient to either: 1) abolish the traditional rule which gives the fact-finder wide latitude in fixing the amount of damages for loss of society; or 2) establish an articulable new test to guide the factfinder in determining the extent of such damages.

I accept the advice of the jury as to the extent of damages suffered by the survivors of Ray Veronie for loss of

society and adopt that award as my own.

CONCLUSION

The foregoing shall constitute the court's findings of fact and conclusions of law.

Lafayette, Louisiana, this 9th day of August, 1979.

/S/ W. Eugene Darrin

Judge, United States District Court